

### REMARKS

The Office Action of December 1, 2005 has been received and considered. Claims 1-35 are pending. Claims 1, 27 and 28 have been amended. Claims 27 and 28 have been amended in non-limiting fashion to correct typographical errors. Reconsideration of the application in view of the following remarks is respectfully requested. Each of the Examiner's rejections is discussed below.

#### Section 102

Claims 1-3, 5-6, 8-10, 13-16, and 27-28 have been rejected under 35 U.S.C. § 102(e) over U.S. Patent Publication No. 2004/0002665 to Parihar et al. ("Parihar"). This rejection is respectfully traversed.

Parihar discloses a shoe 500 with a shoe insert 504 in the sole of the shoe. Insert 504 has a bladder 506 with a cavity having rheological material disposed therein. Coils of conductors 510 generate a magnetic field to activate the rheological material, changing its state from a liquid to a near solid to provide support in the sole for the user's foot.

Parihar fails to disclose or make obvious at least one reservoir of magneto-rheological fluid in the upper of an article of footwear, as required by independent claim 1. The rheological material of Parihar is disposed in the sole of the shoe, not in the upper. Accordingly, the rejection is improper and should be withdrawn.

#### Section 103

##### Claims 7, 11, 12, 17-19, 21- 26, 29-31, and 33-35

Claims 7, 11, 12, 17-19, 21-26, 29-31 and 33-35 have been rejected under 35 U.S.C. § 103(a) over Parihar in view of U.S Patent No. 5,230,249 to Sasaki et al. ("Sasaki"). This rejection is respectfully traversed.

Applicant respectfully submits that the proposed combination of Parihar and Sasaki is improper. Parihar is directed to a shoe 500 with a shoe insert 504 in the sole of the shoe. Insert

504 has a bladder 506 with a cavity having rheological material disposed therein. Coils of conductors 510 generate a magnetic field to activate the rheological material, changing its state from a liquid to a near solid to provide variable support in the sole for the user's foot.

Sasaki, on the other hand, is directed to a shoe having a reservoir 5C of air positioned about the heel of the user. The user pumps air into the reservoir unit a desired cushioning and fitness level is attained, and then memorizes the pressure level indicated on a pressure indicator. In the event that the pressure decreases, the user pumps additional air into the tank until the desired pressure level is reached again.

One skilled in the art would not combine the teachings of Sasaki and Parihar to replace the bladder of Parihar with the reservoir of Sasaki since Sasaki teaches away from such a combination. Sasaki teaches that the user inflates the reservoir to a desired pressure, and the reservoir is intended to remain at that pressure. Sasaki is not intended to be used with a reservoir that has a varying pressure, like the bladder of Parihar, and Sasaki teaches away from a variable pressure. Specifically, Sasaki states that:

"there is **no need for him to make a fine adjustment of the air pressure** depending on his foot feeling as conventional, and the air pumping work to shoe (sic) is very simplified. During the first air pumping work, the indication on the pressure indicating section 12 allows the user to adjust **in a short time** the air pressure within the air tank at a proper level...." (col. 4, line 67 through col. 5, line 6; emphasis added.)

Sasaki is expressly designed to have a very specific pressure, which is to remain constant during use. If the air pressure changes, Sasaki teaches that it can quickly be restored. Thus, one skilled in the art reading Sasaki would be taught away from a reservoir with varying pressure.

Accordingly, there is no motivation or suggestion to one skilled in the art to combine these references since Sasaki in fact teaches away from the proposed combination. Consequently, the rejection is improper and should be withdrawn.

#### **Claims 4, 20 and 32**

Claims 4, 20 and 32 have been rejected under 35 U.S.C. § 103(a) over Parihar and Sasaki in view of U.S. Patent No. 5,813,142 to Demon ("Demon"). Demon is cited as disclosing an

article of footwear that transforms from one state to another upon detection of a force from a user's foot. This rejection is respectfully traversed.

Demon fails to overcome the deficiencies of Parihar and Sasaki noted above. That is, Demon fails to disclose or make obvious at least one reservoir of magneto-rheological fluid in an upper of an article of footwear, as required by independent claim 1; a reservoir of magneto-rheological fluid in a sidewall of an upper, as required by independent claim 17; or a first reservoir of magneto-rheological fluid formed in a lateral sidewall of an upper and a second reservoir of magneto-rheological fluid formed in a medial sidewall of an upper, as required by independent claim 29.

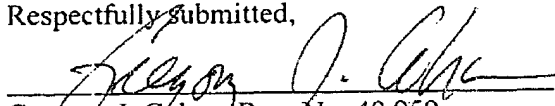
Accordingly, the rejection is improper and should be withdrawn.

**Conclusion**

Pending claims 1-35 are believed to be in form for allowance, and an indication to that effect is respectfully requested at this time. Please apply any charges or credits to Deposit Account No. 19-0733.

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Respectfully Submitted,

  
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